

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: MAY 30 1989

Person to Contact:

Telephone Number:

Refer Reply to:

NO PROTEST RECEIVED.
CASE CLOSED BY REVIEW
7-17-89

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

5/15/89

5/9/89

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

[REDACTED] [REDACTED]
District Director

Enclosures: 3

Enclosure I
Reasons for proposed denial of exempt status

Information submitted with your application indicates that you were incorporated on [REDACTED] [REDACTED]. Your Articles of Incorporation provide that your purpose is:

To receive, hold, care for, invest in, and operate real and personal property, and to use and to distribute, no less frequently than annually, all its income, as well as any or all principal which it shall receive in charitable gifts, to be applied, consistently with existing laws, for the benefit of the members of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] or their immediate family who, by reason of the loss of employment, sickness, accident, disability, or other hardship, sudden emergency or disaster experienced by the Union member or within his immediate family, renders the member and/or his immediate family, incapable of meeting and/or providing for the every day necessities of life, as well as payments on current obligations.

Your Articles of Incorporation provide that you will be managed by a Board of no less than three and no more than nine Trustees who shall be the sole class of members. At least two of the Trustees shall at all times be the current president and secretary/treasurer of the [REDACTED] (hereafter, Local [REDACTED]), who shall continue as Trustees until their death, resignation or failure to hold their office by re-election to their positions with [REDACTED].

You stated that you are not controlled by the union, [REDACTED] [REDACTED]. Information submitted with your application indicates that there are [REDACTED] [REDACTED] members in [REDACTED] [REDACTED]. Members may make application for financial assistance due to sickness, accident, death, labor strike or loss of employment of the member or his spouse, or for lack of sufficient income to meet current obligations. Your benefits are limited to the members of [REDACTED] or their immediate families.

You are financially supported by soliciting contributions from members of [REDACTED] [REDACTED] and from the general public. You also conduct raffles, dances, festivals, etc. Expenditures will be made to provide benefits.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(ii) of the Regulations states that in meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(iii) of the Regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations states that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Enclosure I con't

Section 1.501(c)(3)-1(d)(2) of the Regulations states that the term "charitable" is to be used in "its generally accepted legal sense." Charity includes only those things that fall within the legal definition of charity. Even though an organization may operate for nonprofit, it must also operate for charitable purposes.

In Revenue Ruling 57-449, 1957-2 C.B. 622, a trust to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust.

Based on the information presented, it is our opinion that your organization serves private interests as your sole purpose and activity consists of providing benefits to your members and their immediate family. Your organization is composed of members of [REDACTED] [REDACTED]. You solicit contributions from your members and from the general public. You also conduct fund-raising activities. These funds are invested and distributed to those who apply for assistance in the event they cannot make payments on current obligations, loss of employment, sickness, accident, disability, etc. Benefits are available to your members. The recipients may be related by blood or marriage to your trustees or to other contributors. In fact, the recipients may themselves be contributors to your organization.

You do not meet the organizational test because your Articles of Incorporation do not limit your purposes to one or more exempt purposes specified in section 501(c)(3) of the Code. Your Articles of Incorporation expressly empowers you to engage in substantial activities which in themselves are not in furtherance of charitable purposes within the meaning of section 501(c)(3) of the Code. The exempt purposes under section 501(c)(3) of the Code do not include the provision of benefits of an organization's members.

You do not meet the operational test because you are not operated exclusively for one or more exempt purposes. You are not engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3). Your sole activity consists of providing benefits to your members. You are operated solely to further the private interests of your members. Your activities also constitute inurement to the benefit of private individuals which is prohibited under section 501(c)(3) of the Code. The resources of organizations described in section 501(c)(3) of the Code must be devoted to a public purpose. You are not primarily engaged in activities which accomplish one or more exempt purposes specified in section 501(c)(3) of the Code.

Based upon the evidence presented, you do not qualify for exemption under section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable purposes. You are organized and operated to further the private interests of your members. You do not serve a public interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Providing benefits to your members is not a charitable activity within the meaning of section 501(c)(3) of the Code. A charitable organization must be set up for the benefit of an indefinite class of individuals.